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SECTION 137. |CRIMINAL|INFORMANTS|(SEE MIOG, PART II,
10-3; LEGAL ATTACHE MANUAL, 6-12;
LEGAL HANDBOOK FOR SPECIAL AGENTS, SECTION 8.)|

||137-1| RESPONSIBILITY FOR THE DEVELOPMENT AND OPERATION OF
INFORMANTS

(1) The SAC of each field office is personally responsible for the establishment of informant coverage|concerning| criminal activity of interest to the FBI within|his/her|territory. |Particular emphasis is to be placed on the|priority investigative matters of the office. |Informants are an integral part of the office's overall criminal informant and cooperative witness intelligence base. The SAC must ensure that his/her Agents make every effort to develop quality informants, and that Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. |The development and operation of informants must be closely supervised, because of the|significant| contributions|which|they make to|FBI investigations and because of the difficulties|inherent in their operation. |Accordingly, the SAC should ensure that informant files are reviewed every 60 days by a Supervisory Special Agent. |

(2) |Each|SUPERVISORY SPECIAL|AGENT is personally responsible for the establishment of informant coverage concerning criminal matters under his/her supervision. Each Supervisor must ensure that Agents under his/her supervision make every effort to develop quality informants, and that their Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. Supervisors will review the informant files of those individuals being developed or operated by Agents under their supervision at least every 60 days. The fact that such a review was conducted must be documented in the informant's file on an FD-675 and indexed on the FD-237. The purpose of this review is to ensure that the informant is being operated in accordance with FBI and Attorney General Guidelines, and that adequate coverage is established for the investigative matters under his/her supervision. In fulfilling this responsibility, it is strongly suggested that the Supervisor periodically meet with the informants being operated by Agents under his/her supervision. When a Supervisor is either the case Agent or alternate Agent for an informant, the responsibility for administrative oversight, including the 60-day informant file reviews,

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authorization for the informant to participate in criminal activity and the initial review of informant payments, belongs to the ASAC.

(3) Each SPECIAL AGENT involved in criminal investigative activities at least 50 percent of his/her time, and not otherwise mitigated, is personally responsible for the development and operation of productive informants to address criminal matters within his/her investigative responsibilities. The SAC of each field office has the prerogative to task Agents not working criminal matters at least 50 percent of their time with the development and operation of their productive informants or liaison contacts. Agents are responsible for ensuring that their informants are operated in a manner which is their consistent with FBI and Attorney General Guidelines.

(4) The CRIMINAL INFORMANT PROGRAM MANAGER is personally responsible for ensuring that the program is operated in an effective and efficient manner, consistent with FBI and Attorney General Guidelines.

(5) The CRIMINAL INFORMANT PROGRAM COORDINATOR is personally responsible for ensuring that the SAC and Criminal Informant Program Manager are made aware of all significant issues and developments which impact on the Criminal Informant Program.

EFFECTIVE: 12/20/93

137-1.1 | Moved to 137-2.1 |

EFFECTIVE: 12/20/93

137-1.2 | Deleted |

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EFFECTIVE: 12/20/93

||137-2| DEFINITION

An informant is any person or entity who furnishes information to the FBI on a confidential basis. |The FBI will not disclose the identity of an informant, except as provided in 137-4.2.|

EFFECTIVE: 12/20/93

||137-2.1 Categories of Informants

Informants must be classified according to one of the following categories:

(1) Organized Crime (OC) - Those providing information concerning investigations falling within the organized crime program. (Classification 137A).

(2) Top Echelon (TE) - Those providing information concerning [REDACTED]

(3) Criminal (C) - Those providing information concerning investigations into matters of a general criminal nature. (Classification 137B).

(4) Domestic Terrorism (DT) - Those providing information concerning investigations into persons or groups involved in terrorist activities within the United States, such as bombings and other criminal terrorist activities, on which the FBI has an open and approved case. (Classification 137C).

(5) White Collar Crime (WC) - Those providing information concerning violations falling within the white collar crime program. (Classification 137D).

(6) Drugs (D) - Those providing information concerning investigations falling within the drug program. (Classification 137F).

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(7) Confidential Sources (CS) - Those providing information to the FBI on a confidential and regular basis as a result of legitimate employment or routine access to records, and not as a result of association with persons of an investigative interest to the FBI. The information provided by a Confidential Source must be relevant to authorized FBI investigations. The operation of a Confidential Source must be consistent with FBI and Attorney General Guidelines. A Confidential Source may be paid reasonable amounts for services and expenses. (Classification 137E).|

EFFECTIVE: 12/20/93

137-3 DEVELOPMENT OF INFORMANTS| (See MIOG, Part I,
137-3.1.2(1).)

The following factors must be taken into consideration in determining an individual's suitability to be an informant:

(1) Whether the person appears to be in a position to provide information concerning violations of law which are within the scope of authorized FBI investigative activity.

(2) Whether the individual is willing to voluntarily furnish information to the FBI.

(3) Whether the individual appears to be directed by others to obtain information from the FBI.

(4) Whether there is anything in the individual's background which would make him/her unfit for use as an informant.

(5) Whether the nature of the matter under investigation and the importance of the information being furnished to the FBI outweighs the seriousness of any past or contemporaneous criminal activity of which the informant may be suspected.

(6) Whether the motives of the informant in volunteering to assist the FBI appear to be reasonable and proper.

(7) Whether the information which the informant can provide could be obtained in a more timely and effective manner

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through other sources or by a less intrusive means.

(8) Whether the informant is sufficiently reliable and trustworthy, and whether there is an adequate means by which to verify his/her truthfulness.

(9) Whether the individual appears to be willing to conform to FBI and Attorney General Guidelines regarding his/her operation.

(10) Whether the FBI will be able to adequately monitor and control the activities of the informant.

(11) Whether his/her use as an investigative technique will intrude upon privileged communications or inhibit the lawful association of individuals or the expression of ideas.

(12) Whether the use of the informant could compromise an investigation or subsequent prosecution which may require the Government to move for a dismissal of the case.

EFFECTIVE: 12/20/93

137-3.1 Suitability and Pertinence Inquiries

Prior to the certification of an individual for use as an informant or Confidential Source, a suitability and pertinence inquiry (SI) must be conducted. The purpose of this inquiry is to determine whether he/she is suitable for use as an informant or Confidential Source and the pertinence of the information likely to be provided.

(1) The SI will be conducted for a period not to exceed 120 days. An extension of the initial 120-day period may be authorized by the SAC. The notification of an extension must be entered into CIMS no later than ten working days prior to the conclusion of the initial 120-day period. It must contain the facts or circumstances which preclude completion of the SI during the initial 120-day period. If an individual cannot be certified within 240 days from initiation of the SI, he/she should be closed.

(2) During the SI, the Agent may accept information volunteered by the individual and may make reasonable payments to him/her for services and expenses. In addition, he/she may be paid

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for the information. However, these individuals may not be used to participate in criminal activities or provide substantial assistance in an undercover operation during the SI period.

(3) An informant in the SI stage of development may not be used in a preliminary domestic security/terrorism investigation without the prior approval of a Supervisory Special Agent. Such approval must be recorded in the file. (See 137-4(16).)

(4) SIs should not be used to develop information concerning an individual for the purpose of inducing him/her to become an informant or a Confidential Source.

(5) Any lawful investigative technique can be utilized in determining an individual's suitability to be an informant.

EFFECTIVE: 06/08/94

137-3.1.1 Administration of the Suitability and Pertinence
Inquiry

(1) Upon selection of an individual for use as an informant, the field office will assign a 137 field number and an alpha character from the Resource Management Information System. This alpha character will ensure the time devoted to that 137 matter is allocated to the appropriate program. At that time, the field office will also assign a sequential field office symbol number. The symbol number will contain the field office two-letter identifier as a prefix, the symbol number, the letters SI, and the suffix of either an OC, C, DT, WC, CS or D to indicate the primary area in which the informant will be providing informational assistance. Example: BA 12345-SI-WC.

(2) The SI will commence on the date the 137 file is opened.

(3) Specific authority must be obtained from the SAC to conduct an SI for the individuals identified in (a)-(d) below. FBIHQ authority must be obtained prior to converting these individuals to fully operational status. This authority may NOT be obtained on a UACB basis. The specific restrictions concerning the development or operation of these individuals is set forth in Section 137-7. (See MIOG, Part I, 137-3.2(2).)

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- (a) Privileged informants, i.e., attorneys, physicians, members of the clergy, and news media personnel.
- (b) Individuals who are now or were ever in the Witness Security Program.
- (c) Minors (individuals under the age of 18).
- (d) A counselor in a drug treatment program.
- (4) Immediately upon the opening of an informant, or upon the conversion of a cooperative witness to an informant, enter all information from the opening memorandum in the CIMS database, with the exception of those individuals identified in 137-7 which may require FBIHQ approval. All memoranda are to contain the following information: (See (5) below and 137-10.)

[illegible]

- (h) A statement, if applicable, that this is a privileged occupation informant or, if applicable, a statement regarding the individual's occupation or status as a Federal or state parolee or probationer, an inmate, a past or current participant in the Witness Security Program, a law enforcement officer, an elected official, a union official, a minor, an employee of a financial institution, active duty military personnel, a school employee or a counselor in a drug treatment program. The statement should set forth

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the specific nature of the occupation, the type of information being received, how the information will be obtained and the justification for operating the source. The specific requirements for opening and operating such individuals are detailed in Section 137-7.

(5) Immediately upon the conversion of a cooperative witness to an informant, the field office must prepare a memorandum captioned with the field office two-letter identifier, symbol number and file number. However, individuals identified in 137-7.1 and 137-7.2(2) require prior FBIHQ approval. All such conversion memoranda are to contain the information set forth in 137-3.1.1(4). (See MIOG, Part I, 137-10.)

(6) If any of the above information is not available at the time the SI, the information should be obtained and entered into CIMS prior to the conversion of the individual to a fully operational informant.

EFFECTIVE: 06/08/94

137-3.1.2 Certification of Suitability and Pertinence

(1) At the conclusion of the SI, the supervisor must review the informant's file and make a written finding, based on the factors outlined in 137-3, stating whether the informant appears suitable for use and whether the information likely to be obtained from the individual is pertinent to and within the scope of the FBI's investigative responsibility. The supervisor's certification must be documented in the informant's file and indexed on the FD-237. (See MIOG, Part I, 137-3.2(1)(j).)

(2) If it is determined that the individual is not suitable for use as an informant, the inquiry is to be immediately closed by memorandum to the source file, which should include the specific reason(s) for the closing of the inquiry. This data should then be entered in the CIMS database. Additionally, if the informant is closed because of unauthorized criminal activity, other than for misdemeanor arrests, a teletype to FBIHQ, Criminal Informant Unit, is to be prepared detailing the date of arrest, the criminal activity, and the disposition of the charges. (See MIOG, Part I, 137-10.)

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EFFECTIVE: 06/08/94

| 137-3.1.3 | Moved to 137-3.1.2 |

EFFECTIVE: 12/20/93

137-3.2 Conversion From a Suitability and Pertinence Inquiry
to an Informant (See MIOG, Part I, 137-7.2(1)(a).)

(1) An individual becomes an informant once the
supervisor certifies the individual's suitability. A memorandum is
prepared, and the information is entered in CIMS. The memorandum must
contain the following information in linear paragraph form:

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[REDACTED]

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(j) Certification statement by the field office supervisor described in 137-3.1.2(1).

(k) If handled by a resident agency, identify resident agency.

(1) A statement, if applicable, that the specific requirements for opening and operating individuals detailed in Section 137-7 have been complied with. The statement should set forth specific details on how compliance was obtained.

(2) In the absence of response from FBIHQ, consider the operation of the informant to be approved. However, those individuals identified in Section 137-3.1.1(3)(a) - (d) may not be operated without a specific grant of authority from FBIHQ.

(3) Authority to operate an individual described in Section 137-7.1 must be requested in both the SI and conversion teletypes. Such teletypes may not be sent on a UACB basis.

EFFECTIVE: 06/08/94

| 137-3.3 | Revised and Moved--See 137-7, 137-7.1, 137-7.1.1,
137-7.1.2, & 137-7.2 |

EFFECTIVE: 12/20/93

| 137-3.4 | Revised and Moved--See 137-6 |

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137-4 [OPERATION OF INFORMANTS]

- (1) [Every effort should be made to control the informant's activities when acting at the direction of the FBI to ensure that his/her conduct will be consistent with FBI and Attorney General Guidelines.]
- (2) [Agents should not exercise improper influence on individuals in an attempt to develop them as informants, including promising immunity or reduction of sentence to those who furnish information. Any representations regarding plea agreements, immunity or other prosecutorial consideration for an informant's assistance are to be made only by the United States Attorney's Office.]
- (3) [When it becomes apparent that an informant's role has changed from informational to operational in nature, i.e., making consensual recordings, introducing undercover Agents, purchasing evidence, or otherwise participating in similar operational activities, he/she must be converted to a cooperative witness. (See (15).) Thereafter, he/she must be operated in a manner which is consistent with the Part I, Section 270 of the Manual of Investigative Operations and Guidelines (MIOG).]
- (4) [When it becomes apparent that an informant has furnished false information or that there is some other indication of unreliability, the Agent must promptly advise the SAC and provide FBIHQ with a teletype setting forth the factual background which gave rise to the concern. In addition, the teletype should state whether the informant has appeared as a witness on behalf of the Government in any FBI case or has furnished information which was disseminated to another agency.]
- (5) [All investigative activity must be made a matter of record in the field office files, including negative contacts, to ensure that the informant's files are accurate and complete. However, contacts with an informant for payment purposes only, during which no positive information is generated, need not be reported as a negative contact on an FD-209.]
- (6) [An alternate Agent must be assigned at the time the informant is opened. The alternate Agent must handle some contacts with the informant and must meet or observe the informant by the second contact after conversion. This will ensure the continued use of an informant during the absence or transfer of the case Agent. Any deviation from this requirement must be approved personally by the SAC]

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| and documented in a memorandum in the informant's file. |

| (7) | Constant care should be exercised to avoid any disclosure to anyone which might result in the identification of an informant or cast suspicion upon an informant, except as described in 137-4.2. |

| (8) | Agents have an affirmative responsibility to check the reliability of their informants. |

| (9) | Operation of informants in undercover operations must be in compliance with FBI policy and "Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations." The operational use of informants in long-term cases or undercover operations may warrant use of a personal services contract between the informant and the FBI. This agreement must be coordinated with the substantive unit at FBIHQ and approved by the Contract Review Unit, FBIHQ. In a situation where prosecution is pending for the informant, a Plea Agreement may be warranted between the informant and the United States Government. Close coordination with the United States Attorney's Office is essential in both of these situations. |

| (10) | All representations made to an informant regarding his/her future prosecution in cases in which he/she is a subject, must be made by the United States Attorney's Office, on behalf of the United States Government, and not by the case Agent or others, on behalf of the FBI. |

| (11) | Care must be exercised in handling informants to ensure that they are provided with no information other than that which is necessary to carry out their assignments. | Any disclosure of information to an informant obtained from criminal investigative files must have the express approval of the SAC and be documented in the informant's main file. All disseminations to informants must comply with the provisions of the Privacy Act. No dissemination may be made of information which is classified, which identifies other informants or cooperative witnesses, which is Grand Jury material (see Rule 6(e), Federal Rules of Criminal Procedure), or which is otherwise privileged. When it is decided to disseminate information regarding third persons or entities from FBI files, a teletype must be submitted to FBIHQ, on a UACB basis, under the informant's symbol number caption, setting forth the following information: | (See (g) below.) |

(a) That the SAC of the field office has authorized dissemination of information from FBI criminal investigative files.

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(b) The nature and seriousness of the matter being investigated.

(c) Specific details outlining the need to furnish the information to the informant.

(d) The specific information which is to be furnished to the informant.

(e) The fact that the information to be released has been coordinated with the appropriate field divisions that may be affected by such dissemination.

(f) In emergency situations, the SAC, or in his/her absence, the ASAC, may authorize the dissemination of such information from criminal investigative files and immediately thereafter advise FBIHQ in the manner described herein.

(g) If it is determined that dissemination of information from either civil or applicant investigative files is necessary in order to give the informant credibility, particularly in investigative matters dealing with loss of life, destruction of property, or which could have other serious consequences, or which may contribute to the solution of a serious crime, the SAC must seek authority from FBIHQ prior to making such a disclosure. The request in this instance must include all information outlined above in 137-4 (11)(a)-(e).

(h) If it is determined that the information from FBI files which is to be given to an informant concerns an individual of no investigative interest to the FBI, the individual should, except in the situations set forth below, be contacted in order to obtain consent to utilize the needed information. Such contact with a third party should not take place if to do so would jeopardize an investigation, disclose the identity of an informant, or when such contact could jeopardize the safety of the individual whose consent is being sought.

(i) When it is not possible or is otherwise inadvisable to obtain the third party's consent, the SAC must obtain authority from FBIHQ to disseminate such information. The request should also set forth the following information:

1. The nature and seriousness of the matter being investigated;

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| 2. | An outline of the need to furnish the information to the informant;

| 3. | A list of specific information to be furnished to the informant;

| 4. | Justification for not advising the individual to whom the information pertains;

| 5. | What effect such disclosure might have on the individual's reputation in the community; and

| 6. | The personal recommendation of the SAC. |

(j) If it is determined by the SAC that dissemination of information being considered for disclosure to an informant contains derogatory information regarding an individual who is or is not of investigative interest to the FBI, the SAC will personally make a recommendation to FBIHQ requesting authority to utilize such information.

(k) In all cases described above, wherein FBIHQ authority is required for dissemination of information from FBI files to FBI informants, this authority will be granted at the Section Chief level. All instances of such dissemination will be reviewed by the Director or Director's designee annually. The Director or Director's designee will personally authorize the dissemination of information to informants which is taken from applicant or civil files. Further, the Attorney General or Attorney General's designee will be notified of such disseminations. |

| (12) | Informants will not be used to obtain information relating to legal defense plans or strategies. When a person has been formally charged with a crime and criminal proceedings are still pending, informants will not be used to deliberately elicit information concerning the crime(s) for which the person was charged. An individual is formally charged when he/she has been charged by indictment or information or after his/her initial appearance following arrest. |

| (13) | Information of value provided by an informant on violations which are not of an investigative interest to the FBI should be disseminated to the appropriate law enforcement agency. If full disclosure is not made for one of the following reasons, then, whenever feasible, the field office should make at least limited disclosure to the law enforcement agency having jurisdiction. | The

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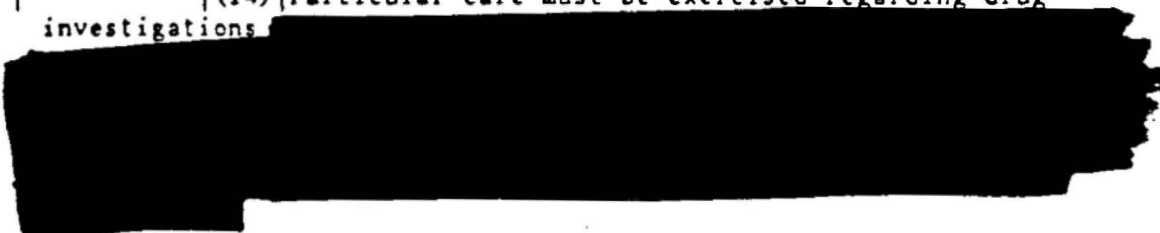
disclosure should be sufficient to apprise them of the nature and extent of the criminal activity. Full disclosure should be made to the appropriate law enforcement agency as soon as the need for restricting dissemination is no longer present. The action taken and the justification for the action should be documented in the informant's main file. Factors to be considered in making such a disclosure are whether the disclosure would jeopardize:

(a) The identity of an informant/cooperative witness;

(b) The life or personal safety of an FBI Agent, informant/cooperative witness or other persons; or

(c) A major ongoing FBI investigation.

(14) Particular care must be exercised regarding drug investigations



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(15) Increased participation in the investigation of drug trafficking will logically result in expanded use of consensual monitoring techniques. Care must be exercised to ensure that informants do not participate in consensual monitoring activities. An informant must be converted to a cooperative witness before he/she can participate in consensual monitoring activities. Any exceptions to this requirement must receive prior FBIHQ approval. Such individuals should be fully briefed as to the consequences of being converted to a cooperative witness, i.e., that they may be required to testify at trial. (See (3).)

(16) Domestic terrorism informants must be used in compliance with the "Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations." Prior to opening an informant in a Domestic Terrorism investigation, there must be an open and approved Domestic Terrorism case. (See 137-3.1(3).)

(17) Undisclosed participation in the activities of an organization by an informant in a manner that may influence the exercise of rights protected by the First Amendment must be approved

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| by FBIHQ, with notification to the Department of Justice. |

| (18) | The lawful activities of legitimate organizations are not subject to investigation. However, individual members of such organizations may be independently involved in criminal activity. In order to ensure that the privacy of constitutionally protected activities will be respected, the SAC must approve the use of any individual where:

| (a) An informant or Confidential Source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or Confidential Source's formal affiliation will give him/her continued access to nonpublic information related to the legitimate purposes of the organization.

| (b) An informant or Confidential Source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities.

| (19) In determining whether to use an informant who is engaged in the lawful activities of legitimate organizations, the SAC should consider:

| (a) The likelihood of responsible behavior by the informant during the course of his/her organizational membership.

| (b) The ability of the FBI to focus the informant's reporting on members of the organization who are involved in criminal activities and to minimize adverse impact on innocent members of the organization.

| (c) Whether the use of the informant or Confidential Source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

| (20) In order to avoid the appearance of impropriety, Agents are prohibited from engaging in business or financial relationships with informants. If an exemption to this general prohibition is deemed necessary, the SAC must articulate sufficient background to demonstrate to FBIHQ that the relationship will not create an appearance of impropriety or otherwise reflect adversely upon the FBI.

| (21) Sensitive circumstances require particular caution.

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When a criminal informant is operating under the direction of the FBI in any matter, the handling Agent and field Supervisor will review appropriate Attorney General's Guidelines on Undercover Operations Revised 11/13/92 as well as the MIOG, Part I, Section 137 and consult with FBIHQ in the event that questions arise regarding sensitive circumstances. The following represent sensitive circumstances requiring Section Chief level approval (a discussion of extraordinary criminal activity is provided at 137-5.1(2):

(a) Any investigative activity which involves the possibility of a criminal informant engaging in activity which involves "sensitive circumstances" as defined herein, must be presented to the appropriate CID section prior to the activity taking place. The section will either authorize the activity or refer it to the Undercover Review Committee for review/approval. For purposes of these guidelines, sensitive circumstances are involved if there is a reasonable expectation that the investigative activity will involve--

1. An investigation of possible criminal conduct by any elected or appointed official, or political candidate, for a judicial-, legislative-, management-, or executive-level position of trust in a Federal, state, or local governmental entity or political subdivision thereof.

2. An investigation of any public official at the Federal, state, or local level in any matter involving systemic corruption of any governmental function.

3. An investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media.

NOTE: There are some circumstances involving officials in judicial, legislative, management, or executive-level positions which may logically be considered nonsensitive. In such instances, the Section Chief, White-Collar Crimes Section, FBIHQ, who has a national perspective on matters involving public officials, must be consulted for a determination of sensitive circumstances.

4. Engaging in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a Federal, state, or local governmental entity.

5. Establishing, acquiring, or using a proprietary.

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6. Providing goods or services which are essential to the commission of a crime, which goods and services are reasonably unavailable to a subject of the investigation except from the Government.

7. Activity that is proscribed by Federal, state, or local law as a felony or that is otherwise a serious crime -- but not including the purchase of stolen or contraband goods; the delivery or sale by the Government of stolen property whose ownership cannot be determined; the controlled delivery of drugs which will not enter commerce; the payments of bribes which are not included in the other sensitive circumstances; or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exemption does not include any statement under oath or the penalties of perjury).

NOTE: Some of the above activities, including the controlled delivery of drugs and bribe payments, are subject to specific review and approval procedures. These matters must be coordinated with FBIHQ.

8. A significant risk that a person participating in an investigative activity will be arrested or will supply falsely sworn testimony or false documentation in any legal or administrative proceeding.

9. Attendance at a meeting or participation in communications between any individual and his or her lawyer.

10. A significant risk that a third party will enter into a professional or confidential relationship with a person participating in an investigative activity who is acting as an attorney, physician, clergyman, or member of the news media.

11. A request to an attorney, physician, member of the clergy, or other person for information that would ordinarily be privileged or to a member of the news media concerning an individual with whom the news person is known to have a professional or confidential relationship.

12. Participation in the activities of a group under investigation as part of a Domestic Security investigation or recruiting a person from within such a group as an informant.

13. A significant risk of violence or physical injury to individuals or a significant risk of financial loss.

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14. Activities which could result in significant claims against the United States arising in tort, contract, or for compensation for the "taking" of property.

15. Untrue representations by a person participating in an investigative activity concerning the activities or involvement of any third person without that individual's knowledge or consent.

EFFECTIVE: 12/20/93

137-4.1 Operation of Informants by Task Force Members (See MIOG, Part I, 137-4.2(5).)

(1) The primary purpose of these guidelines is to ensure that the integrity of the Criminal Informant Program is not diminished as a result of the implementation of the task force concept. These guidelines attempt to balance the need to encourage full cooperation among FBI and non-FBI task force personnel, while maintaining the level of security traditionally afforded to FBI informants. To attain this balance, Agents should limit the disclosure of the identities of FBI informants to non-FBI task force members to those situations where it is essential to the effective performance of their duties.

(2) The SAC of the office of origin may authorize task force members to act as a co-case Agent. Task force members who have been authorized by the SAC to act as a co-case Agent may be present at debriefings, witness payments, and have access to the informant's file. However, an alternate FBI case Agent must be assigned to handle the informant in the absence of the case Agent. The FBI case Agent or alternate Agent is ultimately responsible for the operation and control of the informant, including the responsibility for the preparation and submission of the necessary paperwork. A co-case Agent may meet with an informant without being accompanied by an FBI Agent, provided each such contact is fully documented. While the co-case Agent may make such contacts, it is recommended that the case Agent or alternate Agent be present during meetings with the informant. The presence of an Agent at such meetings not only serves to foster rapport, but also to ensure compliance with FBI and Attorney General Guidelines.

(3) Task force members may not be provided with the

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identity of an FBI informant, unless the SAC has granted appropriate disclosure authority or the SAC has approved him/her to be a co-case Agent for that specific individual. All task force members who have been designated as a co-case Agent must be advised of all relevant FBI and Attorney General Guidelines regarding the development and operation of FBI informants. The fact that the co-case Agent has been provided these instructions should be documented in the informant's file.

(4) In addition to being advised of the relevant FBI and Attorney General Guidelines, a task force member who has been authorized to act as a co-case Agent must be advised that:

(a) He/She is not to make any further disclosure of the identity of the informant, including to other members of his/her department or agency.

(b) He/She is not to prepare, or cause to be prepared, any paperwork or other record, other than official FBI records, regarding their contacts with or payments to FBI informants.

(c) He/She may not provide his/her department or agency with any documents or information which identify or tend to identify an FBI informant.

The fact that these instructions have been given to the task force member must be documented in the informant's file.

EFFECTIVE: 12/20/93

137-4.2 Disclosure Authority (See MIOG, Part I, 137-2 & 137-4(7), Part II, 3-8.4.)

(1) The SAC, or in his/her absence the ASAC, is responsible for granting disclosure authority to disclose the identity of an informant and will necessarily cause such disclosure of the release of information contained in an informant's file. In the decision-making process it is recommended the SAC consider the following issues:

(a) The specific nature of the information to be disclosed.

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(b) The name, title and agency or department of all individuals who will have access to the information.

(c) The specific nature of the request, demand or order which generated the disclosure request.

(d) Whether the disclosure will have an adverse impact on any individuals or FBI investigations.

(e) The SAC's recommendation as to whether the FBI should voluntarily comply with the request or whether an attempt should be made to assert appropriate administrative or legal objections to the request, demand or order.

(2) The response to any subpoena, court order, or any request bearing on the identification of an informant or the production of any informant's file, document, data, or disclosure of the identity of the informant to any individual, must have prior SAC approval. Where appropriate, the field office should have the informant execute a release form (FD-746) prior to the disclosure of the informant's identity or any information provided by the informant. Should the informant refuse to sign the release, the refusal should be noted at the bottom of the form and the informant should be advised that the FBI may nevertheless release the informant information requested, as the informant privilege belongs to the FBI as opposed to the informant. The specific admonishment given to the informant should be recorded at the bottom of the form and the form should be witnessed by two Special Agents.

(3) Any disclosure of information in the informant's file outside of the FBI, should be documented in the informant's main file, including the name of the person to whom the informant's identity was disclosed, the specific nature of the information disclosed and the reason for the disclosure.

(4) Physical possession of the source file is never to be transferred to any individual outside the FBI other than a Federal judge for in-camera ex parte review. Any dissemination of serials from the source's files is to be done only after appropriate redaction and subsequent review by both the Principal Legal Advisor and SAC.

(5) Members of joint FBI task forces may be provided with the identity of an informant on SAC authority consistent with Section 137-4.1.

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(6) FBIHQ is to be subsequently advised of the facts and circumstances regarding all disclosure issues.

EFFECTIVE: 12/20/93

137-4.3 Domestic and International Travel by Informants (See MIOG, Part II, 23-8.)

(1) DOMESTIC TRAVEL - An SAC may authorize travel by an informant within the continental United States following coordination with the SAC, or in his/her absence, the ASAC, of the field office to be visited. SAC authorization is only required in instances where the informant is traveling on behalf of or at the behest of the FBI. Travel may not be approved by any other management or supervisory official within the field office. Normal travel within the continental United States should be confirmed by teletype to the affected divisions.

(2) INTERNATIONAL TRAVEL - All informants who travel to an extraterritorial jurisdiction, either on behalf of or at the behest of the FBI, regardless of the number or frequency of such travel, must adhere to the provisions of the "Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions." The approval mechanism necessary for informants to travel to extraterritorial jurisdictions is set forth in the aforementioned Attorney General Guidelines and may only be obtained on a request-only basis, not on a UACB basis.

EFFECTIVE: 12/20/93

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||137-5| INFORMANT PARTICIPATION IN AUTHORIZED AND UNAUTHORIZED
CRIMINAL ACTIVITY

|An informant may not be authorized to engage in any activity that would constitute a crime under state or Federal law, if engaged in by a private person acting without the authorization or approval of an appropriate FBI and United States Attorney's Office representative, except as authorized by this section. For the purposes of this section, such activity is referred to as "authorized criminal activity."|

EFFECTIVE: 12/20/93

||137-5.1 Informant Participation in Authorized Criminal Activity
(See MIOG, Part I, 137-5.2(1) & 137-6(1).)|

(1) Approval for participation by an informant in
||authorized|criminal activities of an ordinary nature (those not fitting the definition of extraordinary criminal activity in
||137-5.1(2)),|other than the routine purchase of stolen or contraband goods, requires authorization at the ASAC level or above. Participation in the purchase of stolen goods or contraband can be authorized at the level of the field supervisor or above. |For the purpose of these guidelines, drugs are contraband.| The authorizing official must make a written finding|in advance of any such activity.| This written finding must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination. In emergency situations, the ASAC or the appropriate Supervisory Special Agent may verbally authorize the activity and immediately thereafter document that authorization in the informant's main file. |The finding must state that: (See (3) below.)

(a) The activity is necessary to obtain information or evidence for|paramount|prosecutive purposes, to establish or maintain credibility|or cover|with|persons associated with criminal activity in connection with the investigation,|or to prevent or avoid the danger of|death or serious bodily|injury; or|

(b) The need for participation in a criminal activity by an informant outweighs the seriousness of the conduct

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involved.

(2) Participation by an informant in authorized extraordinary criminal activity may only be made by the SAC, or in the SAC's absence, the ASAC, after consultation with and the approval of the United States Attorney. Additionally, the participation of an informant in any of these activities may constitute a sensitive circumstance, and therefore will require prior approval of the appropriate Section Chief, FBIHQ. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to FBIHQ and to the Assistant Attorney General in charge of the Criminal Division or his/her designee, in a form suitable to protect the identity of the informant. The United States Attorney's opinion should be confirmed in writing in such a manner as to protect the informant's identity. Extraordinary criminal activity is defined as that activity which may involve a significant risk of violence, corrupt actions by high public officials or severe financial loss to any victim. FBIHQ must be notified by teletype of such authorizations, as well as the concurrence of the United States Attorney. (Sensitive circumstances are discussed in detail at 137-4(21). (See (1) above & (3) below.)

(a) If the SAC reasonably determines that an emergency situation exists requiring an informant's participation in extraordinary criminal activities prior to being able to obtain the United States Attorney's opinion, the SAC may approve the participation on his/her own authority but shall immediately thereafter notify the United States Attorney, FBIHQ and the Assistant Attorney General, Criminal Investigative Division or his/her designee. Situations wherein the SAC could utilize such authority are: to protect loss of life or substantial property, to apprehend or identify a fleeing offender, or to protect the imminent loss of essential evidence. In such emergency situations, the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's Office before approving the informant's participation.

(3) Written findings made pursuant to 137-5.1(1) and (2) must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination, the dates for which the criminal activity has been authorized, the concurrence of the United States Attorney and a description of the anticipated criminal activity expected to take place. In emergency situations, the documentation should be done as soon as possible following the activity.

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(4) When it is anticipated that the informant will participate in authorized criminal activity incident to a Group I undercover operation, approval must be given in advance by an Assistant Director on the recommendation of the Criminal Undercover Operations Review Committee, except that the Deputy Director's approval is required for participation in authorized criminal activity involving a significant risk of violence or physical injury to individuals. All approvals must be recorded in writing.

(5) When approval is granted for an informant to participate in criminal activity, he/she will be instructed that under no circumstances are they to participate in any act of violence, initiate a plan to commit criminal acts or use unlawful techniques to obtain information for the FBI.

(6) The field office should, to the extent practicable, ensure that:

(a) The adverse effect of the activity on innocent individuals is minimized.

(b) The informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he/she will participate.

(c) The informant's participation in the activity is closely supervised by the FBI.

(d) The informant does not directly profit from his/her participation in the activity.

(7) Any proposal by a Confidential Source to engage in otherwise criminal activities in order to gather information changes the status of that individual from Confidential Source to informant.

(8) The alternate contacting Agent or second witnessing Agent must be present whenever the informant is briefed regarding the nature and extent of his/her authorized criminal activity unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(9) The SAC must review all such criminal activity by informants at least every 90 days. The SAC's review must be documented in the informant's main file or the appropriate control file.

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137-5.2 Informant Participation in Unauthorized Criminal Activity

(1) While carrying out an FBI assignment, an informant or Confidential Source has a unique relationship with the FBI; therefore, his/her participation in any unauthorized activity in connection with an FBI assignment, even of a minor character, must be carefully scrutinized. Hence, whenever it is determined that an informant or Confidential Source has participated in criminal activity which was not authorized pursuant to Section 137-5.1, the field supervisor will ensure that the appropriate law enforcement or prosecutive authorities are advised of any violations of law and make a written determination of whether continued use of the informant is justified. This determination should be documented in the informant's main file.

(a) Whenever a field office learns of the commission of an unauthorized criminal act by an informant or Confidential Source, FBIHQ must be notified immediately. A recommendation must be made whether to notify the appropriate state or local law enforcement or prosecutive authorities of any violation of law, as well as whether continued use of the informant or Confidential Source is justified. In situations where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the field office must advise FBIHQ of:

1. The facts and circumstances surrounding the informant's or Confidential Source's criminal violation;
2. The nature of the notification or request that was made to state or local law enforcement or prosecutive authorities, and the justification for the notification;
3. The nature of the information gained as a result of the violation; and
4. What use will be made of any information gathered through the violation of law.

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Thereafter, the FBIHQ will make a specific determination on whether to continue use of the informant or Confidential Source.

(b) A field office must notify FBIHQ whenever it learns of participation by an informant or a Confidential Source in an act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. A secure teletype must be submitted to FBIHQ setting forth the facts and circumstances concerning the informant's violent activity, what notification or request has been made to state or local law enforcement or prosecutive authorities, what use will be made of any information gathered through the activity; and, whether the office will continue to use the informant.

(2) In determining whether to notify appropriate Federal, state or local law enforcement or prosecutive authorities of an informant's/Confidential Source's criminal activity, the following factors should be considered:

(a) Whether the crime was completed, imminent or inchoate.

(b) The seriousness of the crime in terms of danger to life and property.

(c) Whether the crime is a violation of Federal or state law, and whether a felony, misdemeanor or lesser offense.

(d) The degree of certainty of the information regarding the criminal activity.

(e) Whether the appropriate authorities already know of the criminal activity and the informant's/Confidential Source's identity.

(f) The effect of notification on FBI investigative activity.

(3) Under no circumstances will the field office take any action to conceal a crime by an informant/Confidential Source.

(4) No factual representations or recommendations may be made regarding the disposition of any charges which may stem from unauthorized criminal conduct by the informant without prior FBIHQ authorization.

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||137-6| GUIDELINES AND INSTRUCTIONS TO BE DISCUSSED WITH
INFORMANTS

The following matters must be made clear to the informant
|at the earliest opportunity, but in no event, later than the second
|contact after being converted. | These admonishments must be reiterated
|at least annually or at any time there is an indication that there is
|a need. |The fact that the informant has been so advised or readvised
|must be documented in his/her file and indexed on the FD-237. The
|admonishments are as follows:|

| (1) |ASSISTANCE VOLUNTARY -|The|informant's assistance is
|strictly voluntary and will not exempt him/her from arrest or
|prosecution|for|any violation of law except where such violations were
|approved by|the appropriate FBI official|pursuant to|Section 137-5.1.|

| (2) |NOT EMPLOYEE OR|UNDERCOVER|AGENT -|The|informant is
|not and may not consider|or represent himself/herself|to be an
|employee or undercover Agent of the FBI.

| (3) |CONFIDENTIALITY -|The|informant's relationship must
|be maintained in the strictest confidence and|he/she|must exercise
|constant care to ensure that the relationship is not divulged to
|anyone.

| (4) |REPORT POSITIVE INFORMATION -|The|informant|must|
|report|all|positive information,|both inculpatory and exculpatory,|as
|promptly as possible.

| (5) |JURISDICTION -|An|informant who is providing
|information|relating to specific criminal violations|is to be advised
|of|the|pertinent|legal issues related to the FBI's jurisdiction in
|that area.|

| (6) |ACTS OF VIOLENCE - Informants|will|not participate in
|acts of violence. When asked to participate in an act of violence or
|when an informant learns of plans to commit|an act|of violence, the
|informant|is to take all reasonable measures to|discourage the
|violence, and report the incident to his/her handling Agent at their
|earliest opportunity.|

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(7) UNLAWFUL TECHNIQUES - Informants will not use unconstitutional or unlawful techniques (e.g., breaking and entering, electronic surveillance, opening or tampering with the mail) to obtain information for the FBI.

(8) PLAN CRIMINAL ACTS - Informants will not initiate a plan to commit criminal acts.

(9) PARTICIPATION WITH SUBJECTS - Informants will not participate in criminal activities unless specifically authorized by the FBI.

(10) PAYMENTS ARE INCOME - If the informant is to be paid, he/she must be advised that the payments are taxable for Federal income tax purposes.

(11) GRANT OF CONFIDENTIALITY - The informant must be advised that the FBI will not disclose either his/her identity or the information provided by him/her on a confidential basis which tends to identify him/her, unless necessitated by compelling operational, litigative or prosecutorial considerations.

(12) CONFIDENTIAL SOURCE - Need only be advised that he/she is not acting as an agent or employee of the FBI and that under no circumstances should he/she use unlawful techniques to obtain information. The fact that a Confidential Source has been so advised must be documented in the main file and indexed on the FD-237.

EFFECTIVE: 12/20/93

137-7 RESTRICTIONS REGARDING THE DEVELOPMENT AND OPERATION OF INFORMANTS (See MIOG, Part I, 137-3.1.1 (3) & (4), 137-3.2(1)(1) & Part II, 3-8.6.)

SAC authority is required to initiate an SI on an individual and FBIHQ authority is required to convert that individual to a fully operational privileged informant. For the purposes of this section, the following individuals are to be considered privileged informants: any person admitted to practice law in state court, any licensed physician, any practicing member of the clergy, and any member of the news media. Privileged informants that have been

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certified as to suitability must be authorized by the Assistant Director, Criminal Investigative Division (CID), before they can be converted to a fully operational informant. A field supervisor may approve the acceptance of information from a privileged individual on a one-time basis where the information is not privileged and is not collected at the behest of the FBI.

EFFECTIVE: 12/20/93

137-7.1 Restrictions Concerning the Development and Operation of Privileged Occupation Informants (See MIOG, Part I, 137-3.1.1(5), 137-3.2(3), 137-7.1.2 & Part II, 3-8.6.)

(1) Acceptance of information from a privileged individual on a one-time basis, where the information is not privileged and is not collected at the request of the FBI, may be approved by a field supervisor.

(2) The operation of a privileged informant may constitute a sensitive circumstance and therefore may require the prior approval of the appropriate Section Chief, FBIHQ.

(3) The privileged informant's value to FBI investigative interests should be evaluated in terms of possible Fifth and Sixth Amendment and conflict of interest issues. These individuals will only be approved for operation when it can be clearly articulated that their assistance will be of such significant value to the FBI's law enforcement mission that it outweighs the sensitivity of these areas of concern, and the assistance cannot be reasonably obtained in another manner.

(4) The Principal Legal Advisor must review the results of every contact with all privileged informants to ensure that all legal or ethical issues are identified and properly addressed.

(5) An individual in the privileged category may not be operated as an informant if he/she would be willing to provide information if his/her confidentiality were not protected.

(6) Privileged informants must be advised that:

(a) In seeking information from him/her, the FBI is

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not requesting him/her to violate any legal obligation of confidentiality.

(b) He/She should not furnish any information to the FBI which would violate such a privilege.

(c) The FBI will not knowingly give him/her any assignments which will cause a violation of his/her legal or ethical obligations.

The fact that these advisements were given must be documented in the informant's file.

(7) If it is determined that the informant has furnished information which violates his/her obligation of client confidentiality, such information should be recorded for the purpose of:

(a) Establishing that the information was received and that the issue was recognized.

(b) Documenting that no use was made of the information.

(c) Acknowledging that the information received was relevant to an FBI investigation, and that the investigation proceeded independent of such information.

(8) Use of privileged or other client-related information will be permitted if it is furnished regarding a situation wherein there could be loss of life, serious physical injury, destruction of property of substantial value, result in other serious consequences or which may contribute to the solution of a serious crime. If such a situation does develop, depending upon the exigency of the circumstances, the United States Attorney's Office and FBIHQ must be consulted prior to any use of the privileged information. If, because of exigent circumstances, consultation with the United States Attorney's Office and FBIHQ is not possible prior to the use of the information, both the United States Attorney's Office and FBIHQ must be advised immediately after that use. Only in the most urgent of circumstances should FBIHQ and the United States Attorney's Office prior concurrence not be obtained. Use of privileged information is to be thoroughly documented and will be allowed only in serious situations where to ignore the information could be construed as neglect of duty, notwithstanding the fact that such information may not be admissible in a court of law. (See MIOG, Part I,

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| 137-7.1.1(1).)|

| (9) | Privileged informants who have not made significant contributions to FBI investigative matters within any six-month period should be closed. This will preclude the continued operation of marginal privileged informants and limit contacts with privileged sources to those which are fully justified by operational considerations. |

| (10) | Any change in a privileged informant's status in the community must be immediately brought to the attention of FBIHQ. These changes would include appointment or election to public office, or extensive media attention. |

EFFECTIVE: 12/20/93

| 137-7.1.1 Additional Restrictions Regarding the Operation of Attorneys (See MIOG, Part II, 3-8.6.)

| The operation of an attorney as an informant presents a significant risk of creating the perception of conflict of interest due to his/her obligation to fully represent his/her client. Due to the sensitivity of these circumstances, the operation of attorney informants must be in strict adherence with the following instructions:

| (1) | EXCEPT FOR EXTRAORDINARY SITUATIONS AS SET FORTH IN 137-7.1(8), NO INFORMATION MAY BE ACCEPTED FROM AN ATTORNEY INFORMANT REGARDING ANY OF HIS/HER CRIMINAL OR CIVIL CLIENTS REGARDLESS OF WHETHER OR NOT THE INFORMATION BEING PROVIDED IS DERIVED FROM A PRIVILEGED COMMUNICATION. The attorney informant should be specifically advised not to furnish any information, privileged or otherwise, concerning his/her clients. THIS RESTRICTION APPLIES TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT DURING THE ATTORNEY-CLIENT RELATIONSHIP AND DOES NOT APPLY TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT PRIOR TO OR SUBSEQUENT TO THE ATTORNEY-CLIENT RELATIONSHIP.

| (2) | No payments for services are to be made to an attorney with a criminal defense practice without prior FBIHQ approval. |

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137-7.1.2 Additional Restrictions Regarding the Operation of
Members of the News Media (See MIOG, Part II, 3-8.6.)

In addition to the restrictions set forth in Section 137-7.1, information obtained from privileged informants who are members of the news media must be relevant to the FBI's investigative responsibilities. These individuals are not to be utilized for the purpose of controlling or manipulating the news media. Further, these individuals must be advised that the FBI will not knowingly influence or attempt to influence the editorial policy of the news media.

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137-7.2 Restrictions Concerning the Operation of Specific
Individuals as Informants Based on their Employment
or Status

(1) The following informants may be authorized for operation by the SAC, or an individual designated by him/her, if the requirements set forth below are met and set forth in the opening teletype. This authorization must be noted in the opening teletype. Where such approval has been granted, the teletype may be submitted on a UACB basis. If the requirements cannot be met, these individuals may be opened on a request-only basis, not on a UACB basis.

(a) FEDERAL OR STATE PROBATION OR PAROLE.
Individuals on Federal or state probation or parole may not be operated as informants in violation of the conditions of their probation or parole. It is required that these conditions be determined during suitability and pertinence inquiries and the results of this determination be documented in the conversion teletype as described in 137-3.2. In those cases where an individual would be in violation of probation or parole restrictions, if operated as an informant, the field office should obtain the necessary probation or parole official's permission to operate the individual. This

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authorization must be documented in the informant's file. In those instances where an individual's probation or parole officer cannot be contacted, FBIHQ must be advised of the reason why this contact cannot be made, the need by the field office to use the individual and a request for FBIHQ to grant authority for use of the individual as an informant. Where the field office deems that it would be inappropriate to contact either the source's probation or parole officer or sentencing judge, they may request FBIHQ authorization to operate the individual without the aforementioned concurrences. Such a request must set forth sufficient facts to justify a deviation from the aforementioned policy.

The United States Parole Commission (USPC) requires that parolees and mandatory releasees agree in writing not to act as informants or in other similar capacities for a law enforcement agency. This requirement does not preclude accepting information from such persons as citizen complainants. These individuals may be considered for development as informants when the period of their parole has expired or in those cases wherein the field office has obtained the necessary parole official's permission and this is documented in the conversion teletype described in 137-3.2. The operation of any Federal parolee must be in compliance with the USPC rules and regulations.

(b) INMATES. The use of a cellmate informant, that is, one who has been placed in the cell for the purpose of gathering information regarding pending charges, requires the prior approval of FBIHQ and the concurrence of the prosecuting United States Attorney's Office. Cellmate informants may only be used as listening posts and may not question an accused or stimulate conversations concerning charged offenses. (See Legal Handbook for Special Agents, 8-3.3.2(1).) Any use of Federal inmates, or anyone in the custody of the U.S. Bureau of Prisons, even if held in a local holding facility, which results in the release or transfer of an inmate informant, in authorized criminal activity, or consensual monitoring involving the inmate wearing a body recorder, must have prior approval of Office of Enforcement Operations (OEO), Criminal Division, Department of Justice (DOJ). This approval should be requested by teletype to the FBIHQ substantive unit subsequent to opening and prior to utilization of the source. (If an informant becomes operational, the informant should be converted to a cooperative witness. Operational is defined as wearing a body recorder, the introduction of an undercover Agent, etc.) In order to facilitate the submission of the appropriate information in the request to DOJ, OEO, the following outline is provided so that a well-informed decision can be made:

1. Location of prisoner;

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2. Identifying data on the prisoner, e.g., date of birth, place of birth, Bureau of Prisons number, Social Security Number, and physical description;
3. Charges for which prisoner is incarcerated; including date, sentence, judicial district, and sentencing judge;
4. Copy of prisoner's arrest record or summary of the arrest record must be submitted;
5. The necessity for utilizing the prisoner in the investigation including what other techniques have been tried and why they have failed;
6. The name of the investigation and his/her role in the crime or organization under investigation;
7. Describe the prisoner's relationship or association with the target(s) under investigation;
8. Are the targets aware of the prisoner's incarceration status? If so, what is the prisoner's cover story to avoid jeopardizing his/her safety or the investigation?
9. Detailed explanation of the operational role the prisoner is to perform;
10. Describe the security measures to be taken to ensure the prisoner's safety, alleviate risk to the public, and prevent the prisoner's escape;
11. Length of time the prisoner will be needed in the activity;
12. Will the prisoner be needed as a witness and will he/she be considered for the Witness Security Program?
13. Will a prison redesignation be necessary upon completion of the operational role?
14. Will the prisoner remain in the custody of the investigative agency; be housed in jails or similar facilities at certain times; or will the prisoner be unguarded except for their own protection?

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15. The total number of law enforcement agents assigned to the security detail;

16. Has the request been endorsed by the appropriate Federal/state prosecutor? If not, provide a detailed explanation. Please provide name, phone number, and location of the Assistant United States Attorney endorsing the request.

17. An interim progress report should be submitted if a continuance, beyond date originally projected for conclusion, is necessary, and a detailed progress report should be submitted at the conclusion of activity;

18. Sealed court order(s) must be obtained after the request has been approved if the prisoner is unsentenced or on writ status.

(c) SWORN LAW ENFORCEMENT OFFICERS. The opening of a sworn law enforcement officer as an informant will be permitted only in those instances where the individual is providing information in investigations into corruption within his/her employing governmental entity. A statement regarding the specific nature of the information to be provided and the reason why the information cannot be furnished to his/her department must be included in the opening teletype.

(d) ELECTED/APPOINTED GOVERNMENT OFFICIALS (FEDERAL, STATE AND LOCAL). These individuals must be advised that the FBI will only accept information concerning alleged criminal violations of law and will not accept information concerning the political beliefs or personal lives of individuals within their governmental body, or the private or confidential deliberations of that body, unless violations of law are occurring. Further, the FBI will not knowingly influence or attempt to influence any action of the governmental body unless in furtherance of a compelling investigative interest and authorized by the appropriate FBIHQ official. The fact that these advisements were given must be documented in the informant's file and set forth in the opening teletype.

(e) UNION OFFICIALS. These individuals must be advised that the information which they provide is subject to the reporting provisions of the Employee Retirement and Income Security Act and that the FBI is not interested in, nor will it accept, information concerning legitimate union activities. Further, the FBI will not knowingly influence or attempt to influence any action of the union.

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(f) FINANCIAL INSTITUTION EMPLOYEES. These individuals must be briefed on the provisions of the Right to Financial Privacy Act and advised that the FBI will not knowingly accept information which violates the provisions of that Act.

(g) SCHOOL EMPLOYEES. These individuals must be advised of the provisions of Title 20, USC, Section 12326, commonly known as the Buckley Amendment. This statute generally prohibits educational institutions and their employees from releasing information from records which they maintain on individuals who have either attended or been employed by the institution. Such informants must be advised of the provisions of the law, even if the information they are providing is obtained independent of their employment.

(h) ACTIVE-DUTY MILITARY. The provisions of the Posse Comitatus Act, Title 18, USC, Section 1385, may prevent the use of these individuals in certain types of investigations. These individuals must be advised that the FBI will neither seek nor accept assistance or information which will violate the provisions of the Posse Comitatus Act.

(2) The operation of the following informants may only be authorized by FBIHQ, not on a UACB basis. The opening communication should clearly articulate that their assistance will be of such significant value that it outweighs the sensitivity of operating the individual and that the assistance cannot be reasonably obtained in another manner. (See MIOG, Part I, 137-3.1.1 (5).)

(a) WITNESS SECURITY PROGRAM (WSP). The operation of a current or past participant in the WSP requires the approval of the Department of Justice's Office of Enforcement Operations (OEO). (See MIOG, Part II, Section 27-13.2.) A teletype with the [REDACTED] as the subject must be submitted to the Criminal Informant Unit (CIU), FBIHQ, with the following information:

1. Name of source or person relocated (source may be a witness or a person relocated as a result of witness's cooperation such as a family member, boyfriend, or girlfriend).

2. Alias(es) used by the witness.

3. Approval of the appropriate headquarters' official of the concerned agency (will be given by the CIU when communication is forwarded to OEO).

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4. If the source is not a witness, relationship of source to the witness, and name of witness.

5. Identifying data on source, e.g., sex, date of birth, place of birth, Social Security Number, and Bureau of Prisons Register Number (if applicable).

6. Source's employment; if unemployed, how source is subsisting; and extent this activity jeopardizes source's livelihood.

7. Name(s) of target(s) of investigation and their role in the crime or organization under investigation.

8. Significance and/or scope of the criminal activity and target(s).

9. Source's relationship or association with the target(s) under investigation.

10. Necessity of utilizing source in investigation, including details about nature of use being requested.

11. Consideration of alternatives to source's use and indication of why they will not work.

12. Detailed account of source's involvement in criminal activity subsequent to being approved for WSP services.

13. Appraisal of whether request centers on source's new criminal involvement, and how source is aware of new criminal activity.

14. The benefit that source expects in return for his/her cooperation.

15. Statement as to whether source's activity requires him/her to testify.

16. Indication as to whether source completed testimony for which he/she was placed in the WSP. If known, district and sponsoring AUSA.

17. If known, details about other agencies' use of source since relocation.

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18. Probation or parole status of source (indicate whether U.S. Probation Office and U.S. Parole Commission should be notified).

19. Security measures to be taken to ensure source's safety and minimal risk to the public.

20. Use of electronic devices, body recorders, etc. (cooperative witnesses only).

21. Name of case Agent or Agent specifically responsible for safety of source.

22. Length of time source's assistance will be needed regarding this investigation.

23. Whether source is incarcerated; if so, location and whether prosecutor and/or judge should be avoided.

24. Whether the source will remain in custody of the FBI, be housed in jails or similar facilities at certain times, or whether source will be unguarded except for his/her own protection.

25. If the source is incarcerated, whether a prison redesignation will be necessary upon completion of activity.

26. Whether source is represented by counsel and whether counsel concurs with activity.

27. If applicable, whether activity has been endorsed by appropriate Federal/state prosecutor; if so, name, telephone number and location of prosecutor (cooperative witnesses only).

28. Whether source's activity will require submission of new WSP application and subsequent relocation.

29. Whether the source will be charged/indicted in this investigation.

(b) MINORS (INDIVIDUALS UNDER THE AGE OF 18).

In requesting authorization to use a minor as an informant, the field office must indicate whether parental consent has been obtained for his/her use. If such consent has not been obtained, state whether such consent can or will be obtained. If obtaining consent from his/her parents is not feasible, the field office must state the

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justification for use of such an individual in the absence of parental consent.

(c) BUREAU OF PRISONS (BOP) PERSONNEL. Utilization of BOP personnel requires approval of the Department of Justice's OEO. In submitting a request for review by OEO, the field must provide the appropriate FBIHQ substantive unit with the following information:

1. Name of BOP employee.
2. Location and job title of employee.
3. Necessity of utilizing the employee in the investigation. If other techniques are available, an explanation is required. Detail the activity in which the employee is to be engaged and the location and length of time the employee will be needed. Advise specifically whether the employee will be required to contact target(s), relatives, friends and associates outside the institution in connection with this investigation.
4. Name(s) of target(s) of the investigation and their role(s) in the crimes or organization under investigation.
5. Security measures to be taken to ensure the employee's safety.
6. Whether the employee will be needed as a witness.
7. Whether a job transfer will, or may, be necessary upon completion of the activity.
8. Whether the activity will jeopardize the employee's family, and if so, how.
9. Name(s), title(s) and location(s) of any BOP personnel and phone numbers with whom this matter has been, or will need to be discussed.

This does not apply to routine interviews of BOP personnel where the employee is not asked to perform an operational role in furtherance of an FBI investigation.

(d) COUNSELORS IN DRUG TREATMENT PROGRAMS. Federal law prohibits the opening of these individuals for the purpose of obtaining information on matters relating to the counseling of

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| patients.

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| 137-8 | PAYMENTS TO INFORMANTS | (See MIOG, Part II, 32-1.) |

| (1) | The SAC is | personally responsible for all payments to informants. All payments must be requested by | the submission of a draft request form and a | memorandum to the SAC. | The memorandum | must contain the | case title, | total amount previously paid to the informant during the Fiscal Year (FY), | the date the informant file | was | opened, and the information justifying | the | requested payment. These requests should be closely scrutinized to ensure that they are commensurate with | the | value | of the | information | received. This responsibility rests with the field office management.

| (2) | Payments to informants for services and expenses must be made from | his/her case | funds based on SAC or, in his/her absence, ASAC authority, and not from | the substantive | case fund payment authority. | In resolving whether a payment should be charged to the informant or substantive case fund, it is useful to determine who derived the primary benefit of the payment, and whether the expense was incurred as a direct cost of operating the informant. Where the payment is made for the purpose of conferring a benefit to the informant or is made as a direct result of operating the informant, it should be charged against the informant's case fund authority and not the substantive case authority. |

| (3) | The alternate contacting Agent or a second witnessing Agent must be present at all payments to an informant unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present. |

| (4) | An individual who has requested confidentiality may be paid one time for services rendered and/or expenses incurred under SAC authority without being opened as an informant. This one-time payment under SAC authority can be up to [REDACTED] Should the person be paid a second time, he/she should be opened as an informant. This one-time payment policy may be waived by FBIHQ when necessary to maintain an individual for security or trial purposes. Payments to one-time nonsymbol sources are charged to the field office informant budget using the substantive case file number. Payments are therefore

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| made from the case authority. |

| (5) The SAC or, in his/her absence, an ASAC, | may approve payments to | an informant | for expenses in obtaining information, the performance of services, or information on a C.O.D. basis up to [REDACTED] per FY. | In situations where | an informant | will incur expenses, such as travel, in | connection with his/her operation or | in order to obtain information for the FBI, the SAC may authorize payment | of an advance | for these expenses prior to | the | expenses | actually | being incurred by the informant. | Where funds are advanced in this manner, the field office must ensure that the actual expenses incurred by the informant are determined and reconciled with the advance of funds. | When the total of such payments to an informant reaches [REDACTED] additional payment authority must be obtained from FBIHQ before any further payments or advances can be made. Subsequent requests for additional payment authority should be submitted in increments of [REDACTED] or the amount required for the current FY, whichever is less. Such requests may exceed [REDACTED] where operational considerations necessitate an enhanced authority level. In these situations, the request should set forth adequate justification for the enhanced authority level. |

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| (6) | The request for | an | additional [REDACTED] payment authority should be submitted by | secure | teletype | to the CIU, FBIHQ, under the pertinent | informant caption on a | request-only | basis. The teletype must include:

| (a) A specific request that an additional [REDACTED] payment authority be granted.

| (b) | The total amount paid to the informant to date for the current FY, broken down by services, expenses and total payments. |

| (c) A | concise summary of the information or services provided by the informant, | in chronological order, | for which he/she has been paid since the last authorization. This summary should include the title and character of each case, the general nature of the information or service provided by the source in the investigation, and a statement as to the value of the information or service provided by the | source, including statistical accomplishments attributed to the informant as a result of the information provided. | Immediately following this information, set forth a separate paragraph showing the dates of payments under the prior authorization and the amount paid on each date, divided into the amounts paid for services and the amounts paid for expenses. | For the benefit of the requesting

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Agent, this information is available in the field office through on-line inquiry of the Financial Management System (FMS).

(7) Payments to Informants by an Auxiliary Office (AO)

When an informant provides services to an office other than his/her Office of Origin (OO), care must be taken to record each payment using the informant's file number. This may be accomplished in one of two ways:

(a) If the individual is expected to provide services or information to another office for an extended period of time, close the informant file at the OO and reopen it at the new OO.

(b) If the individual is providing only temporary assistance, the AO may make payment(s) through the draft system using the informant's file number assigned by the OO up to the maximum amount authorized for the FY. The AO must coordinate with the OO to ensure that payments do not exceed the informant's authorization level.

(c) Note that payments to informants will be charged to the informant budget of the field office making the payment.

(8) Lump-sum payments

(a) Each field office is encouraged to submit requests for lump-sum payments for the informant at the conclusion of any case in which he/she has made significant contributions to FBI investigative matters. These requests must be personally approved by the SAC or, in his/her absence, the ASAC. The SAC and ASAC should closely review lump-sum requests to ensure that all payments are justified and that the amount requested is appropriate under the circumstances. Requests for lump-sum payments should be furnished to FBIHQ by teletype captioned with the informant's symbol number, sent to the attention of the CIU, FBIHQ.

(b) Furnish the title and character of the FBI case and all pertinent details which will justify a lump-sum payment. Each funding request concerning any investigative program will be considered strictly on the merits of the case and the significance of the informant's contributions to that investigation. The following issues must be addressed in any request for a lump-sum payment:

1. Significance of the investigation.

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2. Degree of assistance rendered by the informant. The following factors should be addressed:

a. Whether the informant was responsible for the initiation of the case.

b. Quality of the information furnished by the informant.

c. Whether the information was available from other sources.

d. Length of time which the informant devoted to the investigation.

e. Whether the informant participated in consensual monitoring activities.

f. Whether undercover Agents were introduced by the informant.

g. Potential risk for violence toward the informant or his/her family.

h. Whether the informant was able to continue his/her normal employment while assisting in the investigation.

i. Whether the informant suffered any financial loss as a result of his/her cooperation.

j. Value of seized or forfeited property obtained as a result of his/her cooperation.

k. Statistical accomplishments attributed to information or assistance provided by this informant.

l. Whether the informant will testify.

m. Potential for long-term investigative contributions by the informant.

n. If the informant is to testify, whether the Federal prosecutor concurs in the payment.

o. Whether the informant has or will

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receive any payment for services or expenses from any other law enforcement agencies in connection with the information or services which he/she provided to the FBI.

(9) Regular Pay

Recommendations for informants to receive regular payments should contain full justification and a proposed maximum amount to be paid to the informant on a regular basis. Such requests should contain the same information as provided in a request for additional payment authority and should be submitted by teletype to FBIHQ. The request for regular payment authority should specify the length of time for which the authority is sought and the specific reasons why the individual should be paid on a regular basis rather than by SAC authority. Communications requesting renewal of regular payment authority must be submitted at least one week prior to the expiration of the currently authorized period.

(10) Receipts

(a) A receipt must be obtained from all informants at the time of each payment. The receipt is to be signed by the informant using his/her code name, and witnessed by the case Agent or alternate Agent and a witnessing Agent. Both the paying Agent and the witnessing Agent must sign the receipt for all informant payments. Approval for not obtaining a receipt would be rare and must have the personal endorsement of the SAC or, in his/her absence, the ASAC. In the event that a receipt cannot be obtained, a certification, signed by the paying Agent and witnessing Agent, may be submitted as documentation for the payment.

(b) If it becomes necessary to make a correction on a receipt, such corrections must be initialed by the informant using his/her code name initials, and not by the Agent.

(c) Receipts should be forwarded to FBIHQ in accordance with the provisions of the CONFIDENTIAL FUNDING GUIDE. A copy of the receipt attached to the request memo is to be maintained in the informant's main file.

(d) Where payments are to be made to a Spanish speaking informant, Form FD-777, Spanish/English Receipt for Informant and Informant Payments, should be executed to ensure that the terms and the amount of the payment are fully understood by the recipient.

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(11) A gift may be made to an informant in lieu of a payment for services with the prior approval of the SAC, or in his/her absence, the ASAC. In reviewing such requests, care must be taken to avoid the appearance of impropriety and to ensure that the gift is to be given for strictly operational reasons. Purchase of the gift must be charged to the file number of the informant being paid as a payment for services. Agents are not to accept gifts from informants. For restrictions on financial, business and other dealings with informants, refer to the Manual of Administrative Operations and Procedures, Part I, 1-14.1.

(12) If private individuals or representatives of private industries or insurance companies offer a reward to an informant as a result of information supplied by the informant, they should be provided the pertinent information furnished by the informant if he/she agrees. SAC approval is necessary before participating in such payments. If it is necessary for an Agent to be involved in the reward payment in order to protect the informant, the transaction must be fully documented and appropriate receipts obtained. These transactions must adhere to all informant payment requirements. FBIHQ should be advised of the details of all such transactions.

(13) Income tax considerations

(a) All informants who receive compensation from the FBI for their services must be advised that such compensation must be reported as income when filing Federal income tax forms or other appropriate tax forms. Complete details of any problems the informant has encountered with the taxing authorities should be promptly furnished to FBIHQ.

(b) Informants should set forth income received from the FBI on the Federal income tax return as income received from other sources for personal services. Internal Revenue Service (IRS) regulations exempt law enforcement agencies from filing IRS Form 1099 (Miscellaneous Income Statement) for payments made to an informant. However, FBIHQ will provide a statement of payments made to an informant, upon his/her request, to assist the informant in reporting his/her income to the IRS.

(14) Stipulations regarding payments made to witnesses

(a) In trials in which an informant or other individual was paid a sum of money, and is a prospective witness, FBIHQ will furnish receipts signed by the prospective witness when so ordered by the court. Original receipts and a set of reproduced

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copies will be transmitted to the field office in the district where the trial will take place. In order for FBIHQ to furnish these materials, the appropriate field office must furnish FBIHQ the following information:

1. Correct full name.

2. All aliases, code names, and symbol numbers.

3. First date of contact by your office.

4. Tabulation of all payments, broken down as to services and expenses. Although tabulations are not furnished to the Department, they must reflect all amounts contained in the FMS.

5. Listing of any advances, refunds and outstanding balance of advances. (See (b).)

6. Date of last contact by your office. (See (b).)

7. Whether the individual has been contacted or opened by any other field office. (See (b).)

(b) Where the informant has previously been used as a witness and tabulation of payments was prepared, information for items 137-8(14)(a)5 through 7 need be given only from date of last trial in which the individual was used.

(c) Above information should be submitted by separate communication to the Accounting Section, Finance Division. Interdivisional correspondence should be addressed to FBIHQ with copies designated for interested offices.

(d) When an informant is to testify, the informant's financial condition is to be discussed with him/her to ensure that the informant has fulfilled his/her tax obligations as reasonably as possible. If the informant has received FBI payments for services, the informant is to be reminded that these payments are income. Any payments by other law enforcement agencies are to be fully addressed. Any information developed or known concerning potential tax problems is to be brought to the attention of the United States Attorney's Office.

(15) Receipt of unemployment compensation (See FCI Manual,

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| Part I, 134-4.7(8)(a.) |

| (a) At times, informants | may | temporarily lose their jobs and become eligible for unemployment compensation. Where unemployment regulations require listing of all sources of income as a prerequisite for unemployment compensation, | an informant | who | is | being paid by the | FBI | must comply with | state | laws. Informants must be alerted to those local requirements which may impact on them. |

| (b) Where state requires notification of | FBI | payments to informants that would necessitate disclosure of identity of the informant, the field office should consider discontinuing | payments during the period of unemployment compensation benefits | in order to protect his/her identity. |

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137-9 ADMINISTRATION OF INFORMANTS

(1) Each informant must be assigned a code name which is unique to him/her within the field office. The code name or pseudonym is assigned to the informant as a measure of additional security and must be utilized in signing payment receipts. The code name is to be utilized in place of the informant's true name in the field office payment records. Care must be taken to ensure that the choice of the code name does not tend to identify the informant's true name, occupation, or information which is unique to the informant.

(2) Upon the opening of an informant, all relevant data is to be entered into the Criminal Informant Management System (CIMS) within two business days. All other administrative information pertaining to the informant should be entered into CIMS as soon as it becomes available. The Criminal Informant Program Manager is responsible for ensuring that the data is entered into CIMS and that it is done in a timely manner.

| (3) Upon | entry in CIMS of the information from the opening memorandum concerning the informant in the suitability and pertinence inquiry, | FBIHQ will place a "Wanted-Flash-Cancellation Notice" in the Criminal Justice Information Services Division. When the "Wanted-Flash-Cancellation Notice" is placed, the field office will be advised by FBIHQ of any National Crime Information Center (NCIC) inquiry about the informant. In the event there is no record,

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the field office will not receive a reply from FBIHQ. When the informant is closed, FBIHQ will automatically cancel any "Wanted-Flash-Cancellation Notice" which may have been placed. (See MIOG, Part II, 14-12.3.4.)

(4) Informants are not to be advised of their symbol number. Where an informant furnishes information which necessitates a change in the category designation (i.e., OC, C, D, WC, etc.), the symbol number previously furnished will remain the same; however, the suffix must be changed to indicate the appropriate program designation. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or to fulfill other existing needs.

(5) After entering the permanent symbol number from the opening memorandum into CIMS, subsequent communications should contain the informant's symbol number, rather than his/her true name. The informant's symbol number and true name should not appear on any communications which are not secure. All communications concerning an informant's development and/or operation must be submitted by secure teletype.

(6) If an informant was either born or previously domiciled outside the United States, the case Agent should consider sending a secure teletype to the appropriate Legat requesting a background check of the source.

(7) If it is determined that an individual is not suitable for use as an informant, he/she is to be immediately closed by the submission of a memorandum to the field informant file and entry of the data it contains in CIMS, to include a statement setting forth the specific reason for closing the individual and whether the individual should be considered for future use by the FBI.

(8) Upon the closing of an informant, the case Agent must prepare a memorandum stating whether the source's identity was ever made public, i.e., whether he/she ever testified in court. The purpose of this memorandum is to prevent unnecessary or overbroad disclosure of information provided by the informant through a Freedom of Information Act request. In the event that the informant did testify, the case Agent should set forth the general nature and subject matter of the testimony in the memorandum.

(9) Where it is necessary for an informant to be utilized in a field office other than his/her OO, the field OO should furnish

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the new OO with full background information, including a summary of information previously provided by him/her, descriptive data, payment records, mode of travel and any other information useful in the operation of the informant. Any information that reflects negatively upon the reliability of the informant is to be promptly furnished to the field office considering the use of his/her services. The new OO should ensure that the informant is closed in the original OO either prior to submitting an opening communication to FBIHQ or upon entering the information into CIMS.

(10) Whenever an individual is closed, regardless of his/her status, the field office must reinitiate an SI before they can again be operated as a fully operational informant. The opening communication should indicate that the individual is being reopened. The field office must use the same symbol number that was assigned in the previous SI when reopening an individual.

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137-10 INFORMANT COMMUNICATIONS (See MIOG, Part II,
10-10.5.1(2)(e); Correspondence Guide-Field, 2-11 &
3-19.)

(1) All correspondence relating to the development or operation of informants among field offices must be transmitted by secure teletype. [The opening, conversion, closing, and extension of informants whose operation is not restricted by their occupation as in MIOG, Part I, 137-7.1 through 137-7.2, are to be documented by memoranda in the field office file. (See MIOG, Part I, 137-3.1.1(4), 137-3.1.1(5), & 137-3.1.2(2)). Any correspondence regarding additional payment authority, participation in extraordinary criminal activity, and unauthorized criminal activity are to be transmitted by secure teletype to FBIHQ.] The only exceptions to this instruction are existing forms and FD-209s with accompanying inserts or FD-302s relating to investigative matters of interest to another field office. Surface mail and telephone conversations between field offices and resident agencies regarding informants should be strictly limited. All documents which either identify or tend to identify an informant or cooperative witness must be hand-carried by an Agent. All security concerns should be resolved in favor of hand-carrying sensitive information by an Agent.

(2) All correspondence among field offices and FBIHQ

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requesting payments to an informant, travel of an informant, or involving the operation of an informant, must be transmitted by secure teletype under the informant's symbol number caption and not under a substantive case caption.

(3) All information pertinent to FBI investigative responsibilities furnished by an informant must be promptly reviewed, evaluated, channelized, entered into CIMS and all other necessary action taken.

(4) In criminal cases positive information must be recorded either on investigative inserts or FD-302s. Positive information must not be recorded on FD-209s.

(a) USE OF INSERTS - Information provided by an informant that will not become testimony should be recorded on an investigative insert. The insert will contain the informant's symbol number and the date the information was provided. The original insert will be filed in the informant's subfile and a copy will be routed to the pertinent substantive case file. Information received on two or more substantive investigative matters must be recorded on separate inserts and filed only in the pertinent substantive investigative file. All information furnished by the informant must be filed in the informant's subfile.

(b) USE OF FD-302s - If the informant's information is of evidentiary value and likely to become the subject of testimony, the information must be recorded on an FD-302 in the same manner as if the information were received from any other witness. Three copies of the FD-302 will be prepared. The original of the FD-302 must reveal the identity of the informant, but the identity must be concealed on all copies. Also, the informant's file number must not appear on the original FD-302 or any copy. Transcripts of conversations of the informant will be handled in the same manner as an FD-302. If information from the informant is so singular in nature or reported in a manner which would tend to identify the informant, a succinct summary of the pertinent information should be filed in the substantive file. The following is an example of how an original FD-302 and copy should be prepared.

- ORIGINAL FD-302 -

- EXAMPLE -

(To be filed in informant's main file)

JOHN J. DOE, 123 Main Street, New York, New York,
furnished the following information:

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On March 12, 1984, he saw a green tractor trailer bearing Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

- COPIES OF THE ABOVE FD-302 -
- EXAMPLE -

(To be filed in informant's subfile and in the
substantive case file without the true name)

An informant, who has provided reliable information in the past, furnished the following information:

On March 12, 1984, he/she saw a green tractor trailer bearing Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

(c) FD-209 - An FD-209 will be prepared as a cover sheet for inserts which are filed in the informant's subfile. The FD-209s must not accompany inserts routed to the substantive case file. An FD-209 must also be prepared in triplicate for each FD-302. The FD-209 is used in serializing the FD-302 into the informant's main file (original FD-302 bearing the informant's true name), the

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informant's subfile (copy of FD-302 identifying the informant only as an informant) and the substantive case file (copy of FD-302 identifying the informant only as a Confidential Source). The FD-209 will be captioned with the informant's symbol number and bear the file number of the informant's file and the case caption of the substantive case. The following warning statement must appear on the FD-209: "Information contained herein was obtained confidentially. The informant's name is not to be disclosed in any form unless a conscious decision has been made to disclose his/her identity by an appropriate FBI official."

(d) The FD-209 will be used to document all negative contacts with an informant relating to his/her investigative activities as an informant. However, where the informant is contacted for the sole purpose of making payment for services and/or expenses, and they do not provide any information relating to investigative activities, there is no need to document the contact on an FD-209.

(5) Copies of FD-302s or inserts containing informant information which have been disseminated must not be filed in the dissemination control file. These FD-302s or inserts should be filed in the informant's subfile and the pertinent substantive file only. An FD-159 reflecting dissemination should be prepared. Copies should be placed in the informant's main file, and the field office dissemination control file.

(6) Informant information utilized in affidavits for Title III applications, search warrants, complaints, or any other court document must be reviewed by the field supervisor to ensure that the informant information in the document is contained in an insert or FD-302, in both the informant and substantive case files. On the file copy of the legal document in the substantive case file, the case Agent must note the substantive case file, serial number and page of the FD-302 or insert where the informant information can be found which was used in support of the legal document. This notation should be placed in the margins next to the informant's information in the legal document.

(7) Characterizations of informants utilized in affidavits or other legal documents described above should be updated at the filing of each legal document in which an informant's information is used. The serial number of the legal document containing the characterizations (from the substantive case file) must be documented in the informant's main file. This documentation is indexed to the FD-237 and is used in support of statistical accomplishments.

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(8) All positive information obtained from an informant operated by one field office and which pertains to investigative matters in another field office must be immediately transmitted to that field office. Appropriate copies of FD-209s with accompanying inserts or FD-302s containing that information are to be sent to that field office as enclosures to an airtel under the substantive case caption. Copies of these outgoing communications must be maintained in the informant's main file.

(a) Those FD-209s and accompanying inserts or FD-302s are to be sent to the personal attention of the SAC, or his/her designee, in a sealed envelope. In instances where an entire informant's file, or a substantial portion thereof, is required in another field office, the file should be hand-carried by an Agent.

(b) In a situation wherein an informant is being temporarily operated by an office other than his/her OO, original FD-302s in which the informant is identified will be hand-carried by an Agent in a sealed envelope to the SAC of the informant's OO for inclusion in the informant's file. Nothing in or on the envelope should identify the FD-302s as being connected to an informant matter. The sending office will, however, advise the OO by teletype under the source's symbol number that the FD-302s are being sent.

(c) Any transmission by facsimile of any true name FD-302 or other document which tends to identify the informant must be done by secure facsimile.

(9) All statistics obtained as a result of an informant's information should be claimed on an FD-209 and this FD-209, with nothing attached, should be placed in the informant's main file. The FD-209, containing the substantive case title, file number and statistic claimed, should be indexed to the FD-237.

(10) In instances where a criminal informant reports information pertinent to the FBI's foreign counterintelligence or international terrorism mission, a Subfile B is to be created to maintain that information. The Subfile B is to be appropriately classified. Subsequently, the information should be disseminated to the proper substantive FCI/IT file. (See 137-11 (4)(c).)

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137-11 INFORMANT FILES AND INDICES (See MAOP, Part II, 2-5.1.)

(1) A separate and secure room is to be utilized for the maintenance of all informant and cooperative witness indices and pending informant and cooperative witness files. Where possible, all closed informant files should also be maintained in this room or otherwise maintained in a secure and locked condition. All pending and closed informant files are to be maintained under the personal authority of the SAC or a person designated by the SAC. Access to this room will be limited to necessary personnel and this space should be locked at all times when unattended. A log is to be maintained on persons requesting and reviewing informant files. Authority to review an informant's file should be restricted to the SAC, ASAC, the case Agent's supervisor, the Principal Legal Advisor, the case Agent, the alternate Agent, the co-case Agent, the Informant Coordinator, the CIMS Analyst and confidential file room clerk. The file will not leave the room, except for the express purpose of a file review by the supervisor or the handling Agent. Logs must have columns for "date," "file number," "signature of person reviewing file," and "time file charged out" and "in." Informant files should not be located outside this room after close of business hours.

(2) Individual files are to be maintained on all active informants and should be carried as pending. These files, as well as the closed informant files, should be bound in the green file cover and file back (designated as an FD-245a). These files are to be assigned to the Agent who is personally responsible for the development and operation of the informant.

(3) An FD-237 is to be used in the nature of a table of contents or index to indicate where particular data can be found in the file. The form should be carried as the top document in the informant's main file and should not be serialized. This form should be updated regularly as the required information changes.

(4) All informant files should be separated into two sections. Administrative and identifying data is to be maintained in the main file and all information, reports, etc., furnished by the informant should be maintained in the subfile.

(a) Main file items:

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- etc.).
- Correspondence requesting approval to open
 - 1A file items (photograph, fingerprint card,

Report.

- Indices checks (Local and FBIHQ).
 - NCIC inquiry and response.
 - Criminal Justice Information Services Division
- Report.
- Local arrest records.
 - Credit checks.
 - FD-302s in which the identity of the informant has been revealed.
 - Inserts in which the identity of the informant is revealed.
 - FD-209s used to claim statistical accomplishments.
 - FD-209s used as a cover page for above-mentioned FD-302s.
 - FD-209s containing administrative information that may tend to identify the informant.
 - Payment request memos.
 - Draft request forms.
 - Signed payment receipts.
 - Requests to FBIHQ for additional payment authority.
 - Requests to FBIHQ for lump-sum payment authority.
 - All other administrative-type correspondence.
 - Any correspondence that identifies or tends to identify the informant.
 - Documentation authorizing criminal activity.

(b) Subfile A items:

- FD-302s in which the identity of the informant is concealed.
- Inserts which conceal identity of the informant.
- FD-209s used as cover page for inserts.
- Negative contact FD-209s.

(c) Subfile B items:

- Classified FD-302s in which the identity of the informant is concealed.
- Classified inserts which conceal identity of the informant.

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- Classified FD-209s used as cover page for inserts. (See 137-10(10).)

(5) Symbol number and code name.

(a) Each informant should be assigned a permanent symbol number and code name unique to the field office. FBIHQ will be advised of the symbol number and the informant's code name through data entry in CIMS. The code name or pseudonym is assigned to the informant as a measure of additional security and is to be utilized in signing payment receipts. The code name is utilized in place of the informant's true name in the field payment ledger.

(b) The informant is not to be advised of his/her symbol number.

(c) The prefix of the symbol number should consist of the appropriate field office abbreviation. The suffix of the symbol number should identify the category of information which the informant is providing.

(d) Although the informant may subsequently furnish information requiring a change in designation, the number previously assigned will remain the same; however, the suffix should be changed to indicate the appropriate designation, i.e., C, OC, TE, WC, DT, D or CS. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or other need exists.

(e) After FBIHQ has been advised of the permanent symbol number through data entry in CIMS, and documented in the opening memorandum in the source file, subsequent communications should contain the informant's symbol number rather than the true name. The informant's symbol number and true name should not appear on any communications which are not secure. Any communications submitted to FBIHQ in connection with the operation or administration of the informant should be captioned under the assigned symbol number and not the substantive case caption.

(f) The use of symbol numbers should be restricted to informants and should not be used for any other investigative technique.

(6) Indexing

(a) The informant's true name, aliases and other

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identifying data are to be indexed into CIMS. A manual index is to be maintained in the confidential file room for those informants indexed prior to the establishment of CIMS.

(b) No indexing to the general indices should be done from individual informant files. All such indexing should be done from substantive files.

(7) Indices

(a) All offices should maintain an alphabetical name index, a symbol number index, and a code name index for all informants not maintained in CIMS. These indices should be maintained as above in a separate and secure manner under the authority of the SAC or person designated by that official.

(b) SACs should ensure that all necessary searching of these separate indices is conducted.

(c) The result of a search of these indices, either positive or negative, should not be handled in a routine manner similar to a general indices review. Good judgment should be utilized consistent with security concerns. Notification of an informant reference should be coordinated with the appropriate supervisor having responsibility for the mail being searched.

(d) Other indices may be maintained in the confidential file room as deemed necessary by the office for convenience such as an index of informants in other divisions or an index broken down by activity or geographical area. Any such indices should be given the same security as the alphabetical, symbol number and code name indices.

(8) A Form FD-675 entitled, "Supervisor's 60-Day Informant File Review Log" is to be placed immediately underneath the FD-237 in the main informant file. It is to be used to document the Supervisor's review every 60 days as mandated by Bureau policy. It should not be serialized or destroyed. Place a new FD-675 on top of the old form if there is a need for additional certification space.

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137-12 ON-SITE REVIEWS

(1) To enhance the administrative efficiency of the Criminal Informant Program (CIP) at FBIHQ and in the field offices, an on-site review will be conducted periodically of the CIP of each field office.

(2) The purpose of the on-site review is to afford the Criminal Informant Unit an opportunity to review the field CIP from an overall program perspective, by identifying areas which may need attention, and to provide CID with the results of the on-site findings. Each informant's reliability and the action taken when reliability is in question are to be considered during the on-site review. This on-site review should not only be concerned with the number of informants but also with the quality of information furnished, the priority of the investigative programs in which information is provided, and the degree of compliance with FBI and Attorney General policies and guidelines. An on-site review should enable the Criminal Informant Unit to determine whether the field CIP is capable of supporting the investigative programs of the field office, to ensure the worthiness of each informant for continued operation, and to confirm that all informants are being operated within established operational parameters.

(3) Prior to an on-site review, each field office should rate each informant utilizing the scale set forth below by individual investigative program based on information furnished and provide an aggregate overall evaluation for each informant. The evaluation should be based on both contributions consisting of statistical accomplishments and intelligence concerning investigative efforts.

EXCELLENT

Furnishes information of high quality on a continuing basis which usually could not be obtained through other means and which contributes significantly to the FBI's investigative and intelligence gathering efforts.

VERY GOOD

Regularly furnishes quality information which contributes measurably to the investigative and intelligence-gathering efforts of the Bureau.

GOOD

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Furnishes sufficient worthwhile information to remain active and qualified as an informant.

FAIR

| Furnishes|some|information of value for an extended period.

POOR

Informants in this category have furnished no information of value and consideration should be given to closing them.

NEW

Too new to evaluate.

EFFECTIVE: 12/20/93

| 137-13| ATTORNEY GENERAL'S GUIDELINES ON THE USE OF
INFORMANTS

| (1) Attorney General guidelines on FBI use of informants
and confidential sources are included below in these 137 guidelines.

| (2) These guidelines on the use of informants and
Confidential Sources are set forth solely for the purpose of internal
FBI guidance. They are not intended to, do not, and may not be relied
upon to create any rights, substantive or procedural, enforceable at
law by any party in any matter, civil or criminal, nor do they place
any limitations on otherwise lawful investigative and litigative
prerogatives of the FBI.|

"ATTORNEY GENERAL'S GUIDELINES ON FBI USE OF
INFORMANTS AND CONFIDENTIAL SOURCES"

"A. Introduction

"(1) The courts have recognized that the government's use of
informants and confidential sources is lawful and often essential to
the effectiveness of properly authorized law enforcement
investigations. However, use of informants and confidential sources
to assist in the investigation of criminal activity may involve an

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element of deception, intrusion into the privacy of individuals, or cooperation with persons whose reliability and motivation can be open to question. It is proper for the FBI to use informants and confidential sources in appropriate investigations, but special care must be taken to carefully evaluate and closely supervise their use, and to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Though informants and confidential sources are not employees of the FBI, their relationship to the FBI can impose a special responsibility upon the FBI when the informant or confidential source engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

"(2) To implement these guidelines, the FBI shall issue detailed instructions to all Special Agents responsible for dealing with informants and confidential sources.

"B. Definition of Confidential Source, Informant, and Continuing Basis

"(1) A confidential source, under these guidelines, is any person or entity furnishing information to the FBI on a confidential basis, where such information has been obtained as a result of legitimate employment or access to records and is provided consistent with applicable law.

"(2) An informant, under these guidelines, is any other person or entity furnishing information to the FBI on a confidential basis.

"(3) An informant or confidential source used on a "continuing basis" is one providing information or substantial operational assistance with some degree of regularity. This may be as infrequent as a few times per year, or as frequent as several times per week.

"C. General Authority

"(1) An informant or confidential source may be asked to provide information already in his possession, to provide information which comes to his attention, or to affirmatively seek out information, concerning criminal conduct or other subjects of authorized investigative activity. An informant or confidential source may also be asked to provide operational assistance to the FBI, including furnishing resources or facilities.

"(2) The FBI may only use informants or confidential sources in furtherance of its authorized investigative activities and law

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enforcement responsibilities. Informants and confidential sources may not be used or encouraged to commit acts which the FBI could not authorize for its Special Agents.

"D. Required Findings of Suitability and Pertinence For Any Informant or Confidential Source Used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation

"(1) No informant or confidential source may be used to provide information on a continuing basis, no informant may be authorized to associate in activities, participation in which otherwise would be criminal, nor may any informant or confidential source be used to provide substantial operational assistance in an undercover operation, unless the supervisory FBI official designated below has made written findings:

"(a) that the informant or confidential source appears suitable for such use, and

"(b) that the information likely to be obtained or the operational assistance to be provided is pertinent to authorized FBI investigative activity or law enforcement responsibilities.

"Findings of suitability and pertinence shall be made by a supervisory agent designated by the Director except that in the case of a Domestic Security Investigation, the findings shall be made by a Headquarters official designated by the Director.

"(2) A finding of suitability should be preceded by a preliminary inquiry concerning the proposed informant or confidential source. A preliminary inquiry may only be used to assess suitability. It may not be used to develop information concerning an individual for the purpose of inducing him to become an informant or confidential source. A preliminary inquiry can use any lawful investigative technique except mail covers, access to tax information, any technique requiring probable cause, such as mail openings, nonconsensual electronic surveillance, or searches.

"(3) In determining the suitability of an informant or confidential source, the FBI shall weigh and consider the following factors:

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"(a) the nature of the matter under investigation and the importance of the information or assistance being furnished;

"(b) the seriousness of past and contemporaneous criminal activity of which the informant or confidential source may be suspected;

"(c) the motivation of the informant or confidential source, including any consideration sought from the government for his cooperation;

"(d) the likelihood that the information or assistance which an informant or confidential source could provide is not available in a timely and effective manner by less intrusive means;

"(e) the informant's or confidential source's reliability and truthfulness, or the availability of means to verify information which he provides;

"(f) any record of conformance by the informant or confidential source to Bureau instructions and control in past operations; how closely the Bureau will be able to monitor and control the informant's or confidential source's activities insofar as he is acting on behalf of the Bureau;

"(g) the risk that use of informants or confidential sources in the particular investigation may intrude upon privileged communications, or inhibit the lawful association of individuals or expression of ideas; and

"(h) any risk that use of informants or confidential sources may compromise an investigation or subsequent prosecution, including court-ordered disclosures of identity which may require the government to move for dismissal of the criminal case.

"(4) A preliminary inquiry and written determination regarding suitability and pertinence should be completed within 120 days from the date the inquiry began. FBI Headquarters may authorize one or more extensions beyond 120 days, stating in writing the facts and circumstances precluding an earlier determination.

"(5) Determinations of suitability and pertinence shall be reviewed at least every 90 days by a field supervisor and at least annually by FBI Headquarters.

"(6) If it is determined not to use a person or entity as an

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informant or confidential source, any information collected about the person or entity during the preliminary inquiry without the consent of the person or entity shall be promptly destroyed, unless it is or may become pertinent to authorized investigative activity or the person is a potential witness in a criminal prosecution. Any decision not to destroy all information about the person or entity shall be recorded with explanatory facts and circumstances in an investigative case file and shall be reviewed periodically by the SAC or designated field supervisor.

"(7) At any time the FBI learns an approved informant or confidential source is no longer suitable to provide information or operational assistance, his relationship with the Bureau shall be promptly terminated. FBI Headquarters shall maintain records of informant and confidential source terminations, including a detailed statement of the reasons for each termination. These records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources.

"E. Required Instructions to

"(1) Any Informant used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, Any Informant or Confidential Source Suspected of Substantial Involvement in Unauthorized Past or Continuing Criminal Activities, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation:

"Each such person shall be advised that his relationship with the FBI will not protect him from arrest or prosecution for any violation of Federal, State, or local law, except where the FBI has determined pursuant to these guidelines that his association in specific activity, which otherwise would be criminal, is justified for law enforcement; and that in carrying out his assignments he shall under no circumstances participate in any act of violence, initiate or instigate a plan to commit criminal acts, or use unlawful techniques to obtain information (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or criminal trespass). Such persons shall be readvised when necessary, at least annually, and at any time there is reason to suspect they are engaged in serious criminal activity.

"(2) Other Confidential Sources Used on a Continuing Basis:

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"In the place of the instructions in paragraph E(1) above, each such confidential source shall be advised that he is not acting as an agent or employee of the FBI, that he should use only lawful techniques to obtain information, and that he should provide information only in accordance with applicable law.

"(3) When the FBI learns that persons under investigation intend to commit a violent crime, any informants or confidential sources used in connection with the investigation shall be instructed to try, to the extent practicable, to discourage the violence.

"(4) A written record shall be made in each informant or confidential source file of the instructions noted above promptly after they are given.

"F. Authorized Participation by Any Informant in Criminal Activities

"An informant or confidential source shall not be authorized to engage, except in accordance with this paragraph, in any activity that would constitute a crime under state or federal law if engaged in by a private person acting without the authorization or approval of an appropriate government official. For purposes of this paragraph, such activity is referred to as 'otherwise criminal' activity.

"(1) A determination that participation by an informant in otherwise criminal activities is justified shall be made only by the supervisory FBI official designated in paragraphs F(2) and (3) below on the basis of his written finding that

"(a) the conduct is necessary to obtain information or evidence for paramount prosecutive purposes, to establish and maintain credibility or cover with persons associated with criminal activity under investigation, or to prevent or avoid the danger of death or serious bodily injury;

"(b) this need outweighs the seriousness of the conduct involved.

"(2) For purposes of these Guidelines there are two types of otherwise criminal activities -- 'extraordinary,' i.e., those involving a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim, and 'ordinary.' A determination that participation in activities which, otherwise would be 'ordinary' criminal activities is justified as part of an informant's assignment shall be made by a field office supervisor or higher level official, and shall be recorded in writing

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in advance of any such activity, except that oral approval may be given in an emergency situation where confirmed thereafter in writing as soon as possible. The SAC shall review all such criminal activity by informants at least every 90 days.

"Determinations authorizing participation in such activities may concern a single instance of otherwise criminal activity or a specified group of otherwise criminal activities.

"The written determinations shall be submitted annually to Headquarters for review, and shall be subject to review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants.

"(3) A determination that participation in activities which otherwise would be 'extraordinary' criminal activities -- is justified as part of an informant's assignment shall be made only by the SAC and only after the SAC consults with and obtains the approval of the United States Attorney. The consultation shall be in a form suitable to protect the identity of the informant. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to a senior Headquarters official designated by the Director, and to the Assistant Attorney General in charge of the Criminal Division or his designee, in a form suitable to protect the identity of the informant.

"If the SAC reasonably determines that an emergency situation exists requiring informant participation in activities which otherwise would be extraordinary criminal activities before approval by the United States Attorney can with due diligence be obtained, in order to protect life or substantial property, to apprehend or identify a fleeing offender, or to prevent the imminent loss of essential evidence, the SAC may approve the participation on his own authority but shall immediately notify the United States Attorney, the appropriate senior Headquarters official, and the Assistant Attorney General in charge of the Criminal Division or his designee. In such an emergency situation the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's office before approving participation.

"(4) Upon approving any participation in otherwise criminal activity, the FBI shall repeat to the informant the instruction specified in paragraph E(1).

"The FBI shall also seek, to the extent practicable, to provide:

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"(a) that the adverse effect of the activity on innocent individuals is minimized;

"(b) that the informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he will participate;

"(c) that the informant's participation in the activity is closely supervised by the FBI; and

"(d) that the informant does not directly profit from his participation in the activity.

"(5) Any proposal by a confidential source to engage in otherwise criminal activities in order to gather information changes the status of that individual from confidential source to informant.

"G. Notifying Appropriate Authorities of Unauthorized Criminal Activity by Any Informant or Confidential Source

"(1) While carrying out an FBI assignment, an informant or confidential source bears a relationship to the FBI such that his participation in any unauthorized activity in connection with the assignment associated with criminal activities, even of a minor character, should be carefully scrutinized and severely regarded. Hence, whenever a Special Agent learns that an informant or confidential source has participated in a criminal activity in connection with an FBI assignment which was not authorized pursuant to the procedures of paragraph F of these guidelines, the Special Agent shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In exceptional circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall promptly notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, what use will be made of any information gathered through the violation of law, and whether continued use will be made of the

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informant or confidential source.

"(2) Informants who are in a position to have useful knowledge of criminal activities often are themselves involved in a criminal livelihood. It is recognized that in the course of using an informant or confidential source, the FBI may receive limited information concerning a variety of criminal activities by the informant or confidential source, and that in regard to less serious participation in criminal activities unconnected to an FBI assignment, it may be necessary to forego any further investigative or enforcement action in order to retain the source of information. However, whenever a Special Agent learns of the commission of a serious crime by an informant or confidential source, he shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall immediately notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, and what use will be made of any information gathered through the violation of law. A determination to then continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division or his designee.

"(3) Each FBI field office shall immediately notify FBI Headquarters whenever it learns of participation by an informant or a confidential source in a serious act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. Detailed records shall be maintained at Headquarters regarding each instance of informant or confidential source participation in a serious act of violence, and these records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources. A determination to continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division.

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"(4) In determining whether to notify appropriate state or local law enforcement or prosecutive authorities of criminal activity by FBI informants and confidential sources, the FBI shall consider:

"(a) whether the crime is completed, imminent or inchoate;

"(b) the seriousness of the crime in terms of danger to life and property;

"(c) whether the crime is a violation of federal or state law, and whether a felony, misdemeanor, or lesser offense;

"(d) the degree of certainty of the information regarding the criminal activity;

"(e) whether the appropriate authorities already know of the criminal activity and the informant's or confidential source's identity;

"(f) the effect of notification on FBI investigative activity.

"(5) Under no circumstances shall the FBI take any action to conceal a crime by one of its informants or confidential sources.

"H. Informants and Confidential Sources Under the Obligation of a Legal Privilege of Confidentiality or Affiliated with the News Media

"(1) A person who is under the obligation of a legal privilege of confidentiality or who is affiliated with the news media may be used as an informant or as a confidential source only after express approval in writing by the Director or a designated senior Headquarters official, except that a field office supervisor may approve one-time receipt of information not collected at the request of the FBI where the particular information is unprivileged.

"The FBI shall promptly give written notice, or oral notice confirmed in writing, to the Assistant Attorney General in charge of the Criminal Division or his designee of any such Headquarters authorization. The notice shall include sufficient information to allow meaningful review, and shall set forth the reasons why the individual should be used as an informant or confidential source.

"(2) Any such person approved as an informant or confidential source shall be advised by the FBI that in seeking information from

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him, the FBI is not requesting and does not advocate breach of any legal obligation of confidentiality. A record shall be made and kept in the informant or confidential source file when the advice has been given. This advice shall be provided before accepting information on a continuing basis.

"(3) If, despite the advice to the informant or confidential source that revelation of privileged information is not requested or advocated, he offers to provide information that is privileged or arguably privileged, the offer shall not be accepted unless a field office supervisor determines that serious consequences would ensue from rejection of the offer, such as physical injury to an individual or severe property damage. A report concerning such information and the circumstances that warranted its acceptance shall be promptly forwarded to FBI Headquarters.

"If the information is spontaneously provided by the informant or confidential source, without any offer that would alert the Special Agent to the nature of the information, in circumstances which do not meet the standard serious consequences, the information may be recorded in suitable form for the purpose of establishing that the problem was recognized and that no use was made of the information in the conduct of any investigation.

"(4) Regardless of state law, the procedures of this section must be followed for any licensed physician, any person admitted to practice law in a court of a state, any practicing clergyman, and any member of the news media.

"I. Infiltration of Organization Activities by Informants
or Confidential Sources Used on a Continuing Basis

"(1) The lawful activities of legitimate organizations are, of course, not subject to investigation. However, individual members of such organizations may be independently involved in criminal activities. In order to assure that the privacy of constitutionally-protected activities will be respected, the FBI should carefully regulate use of informants and confidential sources who will make use of affiliations with legitimate organizations in order to gather information concerning the activities of individual members.

"In particular, when, to obtain information,

"(a) an informant or confidential source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or confidential source's

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formal affiliation will give him continued access to nonpublic information related to the legitimate purposes of the organization; or

"(b) an informant or confidential source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities,

the determination to use the person as an informant or confidential source on a continuing basis shall be made by the ASAC or SAC.

"(2) In determining whether the use of such an affiliated person as an informant or confidential source on a continuing basis is appropriate, the ASAC or SAC should consider:

"(a) the likelihood of responsible behavior by the informant or confidential source during the course of his organizational membership;

"(b) the ability of the FBI to focus the informant's or confidential source's reporting on members of the organization involved in criminal activities and to minimize adverse impact on innocent members of the organization; and

"(c) whether the use of the informant or confidential source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

"(3) In approving the use of such an affiliated person as an informant or confidential source on a continuing basis, the ASAC or SAC shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"(4) Nothing in this paragraph limits the authority of the FBI to conduct otherwise proper investigations of illegitimate organizations or organizations engaged in unlawful activities. See the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, and on Domestic Security Investigations." [(See MIOG, Introduction, Section 1-3 for updated AG Guidelines.)]

"J. Minimization in Domestic Security Investigations

"In approving use of an informant or confidential source to

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infiltrate a group under investigation as part of a Domestic Security Investigation, or in recruiting a person from within such a group as an informant or confidential source, an FBI Headquarters official shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"K. Persons Represented by Counsel

"Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically an applicable law and Department procedure.

"L. Coordination with United States Attorneys and Other Federal Prosecutors.

"In any matter presented to a United States Attorney or other federal prosecutor for legal action (including prosecution, grand jury investigation, application for a search warrant, or application for a wiretap), where the matter has involved the use of an informant or a confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature and scope of the informant's or confidential source's participation in the matter.

"If the FBI deems it necessary to withhold certain information to protect the informant's or confidential source's identity from possible compromise, it shall inform the prosecutor of the general nature of the information that is being withheld.

"M. Compensation for Informants and Confidential Sources

"(1) The FBI may pay informants and confidential sources a reasonable amount of money or provide other lawful consideration for information furnished, services rendered, or expenses incurred in authorized investigative activity. No payment of money or other consideration, other than a published reward, shall be conditioned on the conviction of any particular individual.

"(2) In investigations involving serious crimes or the expenditure of extensive investigative resources, the FBI may

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compensate informants or confidential sources with an extraordinary payment in excess of \$25,000. The Attorney General shall be informed of any such extraordinary payment as he deems necessary.

"(3) Where practicable, compensation agreements with informants or confidential sources in connection with a significant FBI undercover operation shall provide that compensation will depend on compliance with the obligation of confidentiality for investigative information, and shall further provide that any profits derived from a violation of the obligation shall be forfeited to the United States.

"N. Reservation

"These guidelines on the use of informants and confidential sources are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the Department of Justice."

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| 137-14 | REVISED AND MOVED -- SEE 137-4 (16) THROUGH (19) |

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| 137-15 | DELETED |

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| 137-16 | REVISED AND MOVED -- SEE 137-13 |

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